

AGREEMENT

THIS AGREEMENT is dated and will be effective on the _____ day of _____ in the year _____, by and between the Village of Wellington, (hereinafter called OWNER) and Shade Systems, Inc. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Olympia Park Shade Structures

ARTICLE 2 - ENGINEER

Engineering services during construction will be provided by Village of Wellington personnel. Wellington's designated in house representative shall serve as the ENGINEER who is hereinafter called ENGINEER and who is to act as OWNER's representative, shall assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.1 Work will be **substantially completed within 60 days** from the date of Notice to Proceed, and shall be **finally complete within 75 days** from the date of Notice to Proceed.

3.2 LIQUIDATED DAMAGES. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR and/or CONTRACTOR'S Surety shall pay OWNER Two Hundred and Fifty 00/100 dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR and/or CONTRACTOR'S Surety shall pay OWNER Five Hundred and 00/100 (\$500.00) for each day that expires after the time specified in paragraph 3.1 for final completion and readiness for final payment until the Work is completed and ready for final payment.

3.3 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded by the Owner.

ARTICLE 4 - CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, subject to adjustment as provided therein, in current funds as follows:

The amount of **Eighty Five Thousand One Hundred Sixty Nine Dollars and Ninety Two Cents (\$85,169.92)**, which is based on the price(s) in the Schedule of Values.

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. PROGRESS PAYMENTS. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the **10th** day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in Paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.1.1. Prior to successful completion of 50% of the work, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with Paragraph 14.02 of the General Conditions.

90% of Work completed.

0% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in Paragraph 14.02.A of the General Conditions).

5.1.2. Upon successful completion of 50% of the work, progress payments will be made in an amount equal to 95% of work completed, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with Paragraph 14.02 of the General Conditions.

5.2. FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, and settlement of all claims, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07 of the General Conditions.

ARTICLE 6

(This Article left blank intentionally).

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, Laws, and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

7.2. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2. above) which pertain to the subsurface of physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies which pertain to the physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4. CONTRACTOR has given OWNER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to CONTRACTOR.

7.5 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire Agreement between OWNER and CONTRACTOR concerning the Work, consist of the following:

8.1 This Agreement consisting of 4 pages.

8.2 This space left blank intentionally.

8.3 Notice of Award

8.4 General Conditions consisting of 48 pages

8.5 Supplementary Conditions consisting of 3 pages.

8.6 Sales Tax Recovery Program Special Conditions For Owner Furnished Materials and Equipment consisting of 5 pages.

8.7 General Requirements Section 1000 consisting of 4 pages

8.8 Drawings not attached hereto but are listed in the List of Drawings

8.9 Addenda numbers 1 to 1, inclusive

8.10 CONTRACTOR'S Bid

8.11 The following which may be delivered or issued after the Effective Date of the Agreement may not be attached hereto: Notice to Proceed, all written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.04 and 3.05 of the General Conditions.

8.12 The documents listed under Article 8 above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions, will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained on the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 10 - INDEMNIFICATION

10.1 This space left blank intentionally.

10.2 CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and their respective officers, and employees, for liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the construction contract. Regardless of the foregoing, the indemnification herein shall be the greater of the CONTRACTOR'S insurance coverage for such claim or Five Million Dollars. Nothing in the Contract Documents shall be construed or interpreted as consent by the OWNER to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

ARTICLE 11 – SALES TAX INFORMATION

11.1 The Owner Sales Tax Recovery Program Special Conditions are incorporated herein by reference.

ARTICLE 12 - PROJECT SIGNAGE

CONTRACTOR shall furnish and erect 1 Owner standard signs at the Project site as directed by the OWNER. CONTRACTOR may install signage at the site subject to approval by the OWNER.

ARTICLE 13 – CONFLICT OF INTEREST

This Agreement is subject to any and all applicable conflict of interest provisions found in the policies or Code of Ordinances of Wellington, the Palm Beach County Code of Ethics and Ch. 112, Part III, Florida Statutes. The CONTRACTOR's completed Conflict of Interest Statement shall be attached hereto and incorporated herein. During the term of this Agreement and any renewals or extensions thereof, the CONTRACTOR shall continue to disclose to OWNER any possible conflicts of interests. The

CONTRACTOR's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of OWNER.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement. One counterpart each has been delivered to OWNER, CONTRACTOR, and the ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by the ENGINEER on their behalf.

OWNER: Village of Wellington CONTRACTOR Shade Systems, Inc.

By _____
Bob Margolis, Mayor

By _____

Attest: _____
Awilda Rodriguez, Wellington's Clerk

Attest: _____

(SEAL)

(CORPORATE SEAL)

Address for giving notices
12300 Forest Hill Boulevard
Wellington, Florida 33414

Address for giving notices

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

License No. _____

Agent for service of process:

Attorney for Wellington

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)